



March 4, 1999

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-0618

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 124077.

You assert that section 552.103 of the Government Code excepts from disclosure the requested information. Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex.*

Law Sch. v. Texas Legal Found., 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). In this instance, you have made the requisite showing that the requested information relates to litigation for purposes of section 552.103(a).¹ The requested records therefore may be withheld from public disclosure.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). However, if the records contain information that is confidential by law, you must not release such information even at the conclusion of the litigation. Gov't Code §§ 552.101, .352.

In light of our conclusion under section 552.103(a), we need not address the applicability of other exceptions, if any. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref.: ID# 124077

Enclosures: Submitted documents

¹If a governmental body submits to this office a "representative sample" of the requested records, we assume that the sample submitted is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). When a representative sample of the requested information is submitted to this office, the open records letter ruling does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

cc: Ms. Susana Almanza
c/o PODER
55 North IH 35, Suite 205-B
Austin, Texas 78702
(w/o enclosures)

Ms. Sylvia Herrera
c/o PODER
55 North IH 35, Suite 205-B
Austin, Texas 78702
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March 4, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
314 West 11th Street, Suite 300
Austin, Texas 78767

OR99-0619

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122524.

The Travis County Sheriff's Department received a request for the report of an incident causing the death of Marsha Ann Gomez. You have supplied the responsive information to this office, asserting that it is excepted from public disclosure by sections 552.108 and 552.115 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

In pertinent part section 552.108 of the Government Code reads:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the [disclosure] requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

- (c) This section does not except from the [disclosure] requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Basic information about an arrested person, an arrest or a crime is not excepted by this statute. Gov't Code § 552.108(c). The courts recognize a right of access to such basic information, characterized as "front page" offense report information, and expressly made public by court decision. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559

(Tex. 1976). Our office summarized the information not excepted from disclosure in Open Records Decision No. 127 (1976). Unless excepted from disclosure by another provision of the Open Records Act "front page" information must be released. Open Records Decision No. 181 (1977).

Subsection 552.108(a)(1) excepts from disclosure information related to prosecutions or criminal investigations that are in progress, as release of this information would interfere with law enforcement. You represent that the subject file has been forwarded to the Travis County District Attorney's Office and made part of an ongoing murder investigation. Based on your representations we conclude that release of this information would interfere with the investigation or prosecution of crime. With the exception of "front page" information the subject information may therefore be withheld. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See Gov't Code* § 552.007. As all of the responsive information is subject to the above discussion, we shall not address your argument raised under section 552.115 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref:: ID# 122524

Enclosures: Submitted documents

cc: Ms. Kara Roberts
Service Life and Casualty Insurance
P.O. Box 26800
Austin, Texas 78755-0800
(w/o enclosures)